IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.376 OF 2006

State of Maharashtra .. Applicant

Versus

Alwyn Mark Sequeria & Ors. .. Respondents

Mr.Borulkar, P.P. with Mr.S.S.Pednekar, A.P.P. for State

Mr.Tulsi, Senior Advocate with Rizwan Merchant for Respondent No.9.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 19th December 2006.

P.C.

. After this application was argued for some time, the P.P. and Mr.Tulsi, learned Senior Advocate appearing for respondent No.9 so also Counsel appearing for other accused have restricted their submissions to the direction in the impugned order.

2. Since it is the grievance of the prosecution that a direction to file separate charge sheet on the basis of observations in the order enlarging the accused on bail cannot be issued, ultimately, it was decided that all issues concerning the framing of charges be kept open. Accordingly, revision application is disposed of with the following order:-

> ". Direction of the learned Special Court to the prosecution to file three separate charge sheets is set aside. It is made clear that it is well established that the trial court is not bound by the

opinion of the I.O. in the charge sheet or the draft charge filed by the prosecution. The trial court is required to apply its mind to the allegations in the charge sheet, scrutinise the material annexed to the same and form its independent opinion regarding the offences which are established prima facie to frame charges against different accused on the basis of such material.

. The direction given by the trial court to the prosecution thus is unnecessary and unsustainable. However, the trial court shall be required to consider as to which of the offences are prima facie made out against each of the accused for the purpose of framing charges.

. The trial court is entitled to

arrive at its own conclusion as to whether the charge sheet pertains to a single conspiracy or not, and whether the offences alleged and individual seizures relied upon by the prosecution in the present case are in the course of the same transaction or not. If the trial court comes to the conclusion that the offences are not a part of the same transaction then, it will be open for the trial court to decide whether a joint trial of all the accused is legally permissible or not."

(S.C.Dharmadhikari, J)